



AlaFile E-Notice

05-CV-2019-900716.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

NAN M HEDGSPETH V. CITY OF GULF SHORES ALABAMA ET AL
05-CV-2019-900716.00

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Judge Code:

GENERAL INFORMATION

Election to Proceed under the Alabama Rules for Expedited Civil Actions: ☐ YES ☒ NO



**IN THE CIRCUIT COURT FOR BALDWIN COUNTY, ALABAMA
CIVIL DIVISION**

NAN HEDGSPETH,

Plaintiff,

v.

**CITY OF GULF SHORES, CITY OF GULF SHORES
PLANNING COMMISSION, GULF SAND
DEVELOPMENT, INC., REGENCY, LLC
and Fictitious Defendants A-D, being
those Defendants whose identities are unknown as
persons or entities that are legally responsible for the
legal wrongs set forth herein,**

Defendants.

Case No. _____

COMPLAINT

Plaintiff NAN HEDGSPETH ("Plaintiff") files her Complaint as follows:

1. Nan Hedgspeth resides at Unit E-103 at the Enclave at Oak Hill Condominiums at 1430 Regency Road, Gulf Shores, Alabama 36542. She is over the age of 19 years, a resident of Gulf Shores, Baldwin County, Alabama, and a member of The Enclave at Oak Hill Condominium Owners Association, Inc.
2. The City of Gulf Shores is a municipal corporation existing in the State of Alabama and Baldwin County. City of Gulf Shores Planning Commission is an agency of the City of Gulf Shores located in Gulf Shores, Baldwin County, Alabama.
3. Defendant Gulf Sand Development, Inc., is an Alabama corporation with its principal place of business at 808 Lurleen Wallace Blvd. N., Tuscaloosa, AL 35401, and doing business in Gulf Shores, Baldwin County, Alabama.

4. Defendant Regency Place, LLC is an Alabama limited liability company with its registered office at 2211 Pizitz Drive, Huntsville, Alabama 35805, and doing business in Gulf Shores, Baldwin County, Alabama.

5. Defendants A-D, being those Defendants whose identities are unknown as persons or entities that are legally responsible for the actions, damages, wrongs, and/or choses of action set forth herein

FACTS

6. On May 9, 2005 the City of Gulf Shores gave final PUD approval for 342 unit condominium complex located on 17.33 acres at the eastern corner of the intersection of Ft. Morgan Road and Regency Road in Gulf Shores, Alabama. The PUD was to be known as the Enclave at Oak Hill, a Condominium Complex. *Resolution No. 3829-05.*

7. On September 19, 2005 a Unity of Title was recorded on Lots 1 and 2 comprising the 17.33 acres stating in part, "the two lots comprise a single site and cannot be sold or conveyed separately . . . This restriction shall constitute a covenant running with the land"

8. On September 28, 2005 the subdivision plat for the Enclave at Oak Hill Condominium complex was recorded, Slide 2234-B.

9. The developer constructed Phase I of the condominium throughout 2005 and 2006.

10. On January 12, 2007 the Declaration of Condominium for the Enclave at Oak Hill were recorded in the Baldwin County Probate Court, Instrument No. 1025311, declaring the entire condominium complex of 342 units, and that it could be developed in Phases I, II, and III.

11. The first unit was sold on January 26, 2007, and units continue to be sold by Pine Hill Development throughout 2007, 2008 and beyond.

12. On September 14, 2009, without notice, hearing or going through Zoning Ordinance

amendment process as required by the Gulf Shores Zoning Ordinance, the City of Gulf Shores amended the PUD 3829-05 via Resolution 4687-09, to require that in order for “construction to begin on Phase II of the project in 2012 and commencement of construction for Phase III of the project in 2015 [that] by November 1, 2009, The Enclave at Oak Hill shall construct a berm or ditch” to help with water runoff.

13. Less than 60 days later, on November 12, 2009, the City of Gulf Shores, without notice, hearing or process, wrote to Pine Hill Development, LLC (the original developer) that the entire PUD had “expired.” As justification to expire the entire PUD, the City solely relied on the alleged failure of the Enclave at Oak Hill to construct a berm or ditch by November 1, 2009.

14. A year later on November 8, 2010, BB&T Bank via foreclosure deed conveyed the unsold units, Lot 2, and the portion of Lot 1, described in the Condominium Documents as “Phase II” to Eagle AL I SPE, LLC. The deed stated, “Pursuant to Ala. Code §35-8A-304(e)(4), BB&T intends to hold the special declarant rights identified in that certain Declaration of Condominium of The Enclave at Oak Hill, a condominium in the office of the Judge of Probate of Baldwin County, Alabama, as Instrument No. 1025322 on January 12, 2007 (the “Declaration”) solely for transfer to another person and will not assume any obligations or liabilities of the “Developer” named therein. (emphasis added).

15. On July 28, 2011, Eagle AL I SPE, LLC, executed a statutory warranty deed of the same property interests conveying to Gulf Sand Development, Inc., subject to, *inter alia*, the following: the terms, conditions and obligations set forth in the Declaration of Condominium of the Enclave at Oak Hill; Developmental rights and special declarant rights granted Developer by the Condominium documents; Unity of Title dated June 9, 2005; rights of others in and to the use of any common areas; and easements appurtenant to the land that comprise Phase II and Phase III.

16. In 2014 the City of Gulf Shores adopted a Land Use Plan. The Future Land Use Map designation in the City's 2014 Land Use Plan zoning for the subject property is medium density residential at 6 to 10 dwelling units per acre, which is typical of a townhouse development.

17. In February 2016, Defendant Gulf Sands Development, Inc. ("Sands") applied to the Defendant City of Gulf Shores ("City") for a subdivision of Lot 1 into two lots. On March 22, 2016 the planning commission tabled the subdivision plat request specifically "to allow the applicant time to provide a complete submittal." No complete subdivision submittal ever occurred.

18. On April 6, 2016, Sands' counsel wrote the City's counsel stating, "[Sands] wants to sell the portion of property . . . without seeking the approval or participation of the condominium owners and their association." The only way Sands could sneak the deal past Enclave at Oak Hill condominium owners such as Plaintiff Hedgspeth was to not comply, *inter alia*, with the City's subdivision regulations, zoning ordinance and 2014 Land Use Plan.

19. On April 20, 2016, the City writes Sands stating that the previous conveyances of the property represented a "de-facto subdivision of the property" and that no subdivision approval would be required.

20. On December 20, 2017, Sands conveys to Defendant Regency Place, LLC ("Regency") a portion of Lot 1 and all of Lot by a metes and bounds legal description.

21. On December 20, 2017 the City vacates the Unity of Title recorded on September 19, 2005.

22. In 2018 Regency applies to the City of Gulf Shores for Site Plan approval for four story, 206 unit apartment complex on land comprising 10.3 acres. The site plan sought 20 dwelling units per acre.

23. On June 26, 2018, the City of Gulf Shores approved the site plan for the Regency

Apartments.

REQUEST FOR DECLARATORY RELIEF

24. Plaintiff adopts and incorporates all paragraphs of the complaint as if fully set out herein.

25. The Plaintiffs hereby petition this Court pursuant to Alabama law for a declaratory judgment declaring that approval of the site plan, was in clear violation of the City's 2014 Land Use Plan, including the requirements for a maximum density of 6 to 10 dwelling units per acre. The proposed apartments are at 20 dwelling units per acre. Despite this obvious inconsistency, the Planning Commission resolution found the proposal to be consistent with the comprehensive plan. The violations are clear and therefore, the site plan's approval was arbitrary, capricious or unreasonable; and not in compliance with governing laws, ordinances and regulations. The decision was not sound and fair and that is not fairly debatable. As a result, the approval was in clear violation of the governing law, illegal, arbitrary and/or capricious.

26. The Plaintiffs hereby petition this Court pursuant to Alabama law for a declaratory judgment declaring that the sale from Sands to Regency by metes and bounds description on December 20, 2017 was an illegal sale and therefore void. Section 9-2 of the subdivision regulations states in pertinent part,

No owner, or agent of the owner, of any lot located within a subdivision may transfer or sell any land by reference to or exhibition of or by other use of a plat of a subdivision, ***before such plat has been approved by the Planning Commission and recorded with or filed with the Probate Judge of Baldwin County.*** The description of such a lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring ***shall not exempt the transaction*** from penalties or remedies herein prescribed.

27. The Plaintiffs hereby petition this Court pursuant to Alabama law for a declaratory judgment declaring that a subdivision approval by the Planning Commission and recorded in Probate Court was required.

28. The Plaintiffs hereby petition this Court pursuant to Alabama law for a declaratory judgment declaring that That the actions of Defendants violate the recorded Declaration of Condominium of the Enclave at Oak Hill. And that Defendant Sands and/or Regency have violated the Declaration and their duties to the condominium owners, including Plaintiff Hedgspeth, under the Alabama Condominium Act.

29. The Plaintiffs hereby petition this Court pursuant to Alabama law for a declaratory judgment declaring that the Defendants' actions as heretofore described violate the Zoning Ordinance of the City of Gulf Shores, Subdivision Regulations, the PUD Amendment procedure, notification process, and due process and equal protection for adjoining land owners.

30. The Plaintiffs hereby petition this Court pursuant to Alabama law for a declaratory judgment declaring that the Defendants' actions were arbitrary, capricious and not fairly debatable.

WHEREFORE, premises considered, Plaintiff requests this Court to adjudge and decree as follows:

- a. the approval of the applicant's Site Plan for Regency Apartments is null, void and rescinded;
- b. the sale from Sands to Regency was an illegal sale in violation of the subdivision regulations and is null, void and of no effect;
- c. the lack of subdivision approval and illegal site plan approval violates the Plaintiff's constitutional rights, and was clear, arbitrary, or capricious; and
- c. such other and further relief deemed appropriate by the Court.

Plaintiff demands trial by jury on all issues so triable.

Respectfully Submitted,

By: s/ Adam M. Milam
Adam M. Milam, Esq. (MIL103)

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As Counsel for Plaintiff

SERVE DEFENDANTS VIA CERTIFIED MAIL AS FOLLOWS:

The City of Gulf Shores, Alabama
ATTN: CITY CLERK, Wanda Parris
P.O. Box 299
Gulf Shores, AL 36547

Gulf Sand Development, Inc.,
ATTN: Registered Agent
808 Lurleen Wallace Blvd. N.
Tuscaloosa, AL 35401

Regency Place, LLC
ATTN: Registered Agent
2211 Pizitz Drive
Huntsville, AL 35805